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JOHN ASHCROFT
ATTORNEY GENERAL

(314) 751-3321

September 23, 1981

Mr. Alexander L. Stevas, Esq.
Clerk, United States Supreme Court
Washington, D.C. 20543

Re: State of Missouri, et al., petitioners v. Craton Liddell, et al., respondents, No. 80-2152

Dear Mr. Stevas:

Enclosed herewith please find 40 copies of the United States District Court's Order and Memorandum of September 21, 1981, which the petitioners wish to submit for the Court's consideration in the above-referenced case. This Order was entered after the filing of the petitioners' supplemental brief and could not be included therein. However, the Order and Memorandum are being forwarded to the Court in keeping with your request to Ms. Eyvon Mendenhall, Clerk of the United States District Court for the Eastern District of Missouri, that all documents filed in the above-referenced case since May 1, 1981, be forwarded to the Supreme Court for their consideration.

The Order in question is a denial of a motion by the United States to strike that portion of the District Court's August 24, 1981 Order relating to the development for a plan for inter-district desegregation (what has commonly been called the 12(c) plan). The District Court's August 24, 1981 Order was included as Appendix I of the petitioner's supplemental brief. The motion of the United States referred to above has now been presented to this Court as Appendix B in the brief of amicus curiae, the School District of the City of Ladue.

The petitioners wish to call particular attention to the language contained on page 4 of the attached Memorandum, starting with the first full paragraph. The District Court states therein that there is already sufficient evidence in the record to justify

the imposition of an inter-district remedy, such as that comtemplated by paragraph 12(c) of the District Court's May 21, 1980 Order. The petitioners believe that this most recent Order has particular relevance to the argument appearing at pages 28 through 30 of its initial petition and pages 5 through 6 of its supplemental brief

If you need any additional information, please let us know.

Very truly yours,

JOHN ASHCROFT
Attorney General

Larry R. Marshall

Larry R. Marshall
Assistant Attorney General

LRM/rm

cc: Counsel of Record
Enclosure

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MO. [illegible]

H(462)81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED
SEP 21 1981
EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

CRATON LIDDELL, et al.,)
)
Plaintiffs,)
)
v.) No. 72-100C(4)
)
THE BOARD OF EDUCATION)
OF THE CITY OF ST. LOUIS,)
STATE OF MISSOURI, et al.,)
)
Defendants.)

ORDER

A memorandum dated this day is hereby incorporated into and made a part of this order.

IT IS HEREBY ORDERED that the motion of the United States to modify Order H(337)81 be and the same is granted in part and denied in part as set forth in the incorporated memorandum.

Dated this 21st day of September, 1981.

UNITED STATES DISTRICT JUDGE

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SEP 21 1981
EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,
Plaintiffs,
v.
THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

No. 72-100C(4)

MEMORANDUM

This matter is before the Court on H(360)81, the motion of the United States to modify Order H(337)81. For the reasons stated below, the motion to modify will be granted in part and denied in part.

On August 24, 1981, this Court entered its Order H(337)81, which, inter alia, provides that

> IT IS HEREBY FURTHER ORDERED that in accordance with Judge Meredith's order dated May 21, 1980, as amended, that the State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> > To develop and submit to the Court by February 1, 1982, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government imposed school segregation in the City of St. Louis and St. Louis County.

The United States now moves the Court to modify Order H(337)81 by striking the above-quoted portion or, in the alternative, by modifying the language to delete references to the United States, consistent with the following provisions of Judge Meredith's September 17, 1980, order.

> It appears to the Court that it is highly important that the efforts of the United States, the State, and the St. Louis Board of Education, heretofore developed with the cooperation of county school districts should be continued and intensified. This and other considerations indicate the advisability of changing timetables and certain aspects of the parties' participation in some of the programs which are the subject of subparagraphs (a) through (d) of paragraph 12.

* * *

> 3. Paragraph 12(c) is hereby amended as to the following provisions: On or before February 16, 1981 the State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibility plan of interdistrict school desegregation involving the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignment and administrative reorganization provisions.

On March 19, 1981, the United States Court of Appeals for the Eighth Circuit affirmed not only the provisions of paragraph 12(c) in Judge Meredith's September 17, 1980, Order, but also expressly declined to change its February 13, 1981, mandate that affirmed paragraph 12(c) as originally written.

After reviewing Judge Meredith's original and amended orders, the Court of Appeals held that

> The State's motion does not persuade us to stay our February 13, 1981, mandate. Moreover, we are satisfied that the provisions of paragraph 12, both as originally written and as amended, must be enforced. . . . In our February 13, 1981 opinion, we stressed that the State of Missouri, who has been judicially determined to be a primary constitutional violator, may properly be ordered to take steps within its power to remedy those violations (citation omitted). Paragraphs 12(a)-(c) of the district court's order are salutory remedial directives and are entirely enforceable against the State in the present procedural posture of this lengthy and complicated litigation.
>
> The State of Missouri's motion [to stay the Court of Appeals' mandate dated February 13, 1981, or to stay enforcement of the district court's orders] is denied. We order prompt implementation of our mandate in Liddell v. Board of Educ., Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735 (8th Cir., Feb. 13, 1981). (emphasis added).

Liddell v. Board of Educ., No. 80-1458, slip op. at 17 (8th Cir., Mar. 19, 1981).

In light of the Court of Appeals' adherence to its February 13, 1981, pronouncement concerning the legal responsibilities of the

State of Missouri for the prompt desegregation of the St. Louis public school system, id. at 12, the request of the United States for deletion of the above-quoted portions of Order H(337)81 will be denied.

In the alternative, the United States requests that the Court eliminate the United States from the reporting provisions of Order H(337)81.

Plaintiffs-intervenors Adams object to relieving the United States of any responsibilities under paragraph 12(c) as set forth in Judge Meredith's May 21, 1980, Order. Because the United States did not seek appellate review of the paragraph 12(c) reporting requirements, Adams asserts that this Court should not permit the United States now to avoid carrying out its obligations.

The State defendants support the United States' motion to terminate any reporting under paragraph 12(c) of the May 21, 1980, Order pending a trial on the merits of the recently filed amended complaint and cross-claim against the county school districts.

On February 13, 1981, the Court of Appeals took judicial notice that the City Board and Caldwell had filed amended complaints asking the district court to require interdistrict integration with the schools of St. Louis, St. Charles, and Jefferson Counties. Without expressing an opinion as to the merits of the proposed amendments, the Court of Appeals emphasized that

> the pendency of these petitions must not be permitted to delay the full and complete implementation of every feature of the [desegregation] plan developed by the district court and approved by this Court, including those sections of the plan that relate to inter-district integration [paragraphs 12(a)-(c)].

Liddell v. Board of Educ., No. 80-1458, slip op. at 10 (8th Cir., Feb. 13, 1981).

The Court cannot terminate the reporting provisions of paragraph 12(c) without disobeying the foregoing mandate of the United States Court of Appeals for the Eighth Circuit.

Notwithstanding the appellate court mandate, the State defendants argue that it is improper to order the preparation of a

mandatory interdistrict remedy until such time as a constitutional violation has been found which in fact has an interdistrict effect. See Swann v. Charlotte Mecklenberg Board of Educ., 402 U.S. 1 (1971)(emphasizing that the scope of the remedy is determined by the nature of the constitutional violation).

The Court of Appeals explicitly found that paragraph 12(c) of Judge Meredith's May 21, 1980, Order is within the authority of the district court to remedy segregation imposed by the State or other defendants. Id. at 19-20. The record is replete with evidence of discriminatory action and inaction by the State of Missouri. See, e.g., Adams v. United States, No. 79-1468, slip op. at 7-8 (8th Cir., Mar. 3, 1980), setting forth the following historical background of this case:

> Prior to the Civil War, a Missouri statute provided: "No person shall keep or teach any school for the instruction of negroes or mulattoes, in reading or writing, in this State." Act of February 16, 1847, § 1, 1847 Mo. Laws 103. Beginning in 1865, the Missouri General Assembly enacted a series of statutes requiring separate public schools for blacks. See, e.g., Act of February 17, 1865, § 13, 1865 Mo. Laws 226. This segregated system was incorporated into the Missouri Constitution of 1945, which specifically provided that separate schools were to be maintained for "white and colored children." See Mo. Const. art. IX, § 1(a) (1945). Although a 1954 Attorney General opinion declared this provision unenforceable following Brown I, it remained a part of the state constitution until repealed in 1976. Statutes implementing the constitutionally mandated segregation provided for separate funding, separate enumerations, separate consolidated "colored" school districts, and the interdistrict transfer of black students. Most of these statutes were not repealed until 1957. See Act of July 6, 1957, § 1, 1957 Mo. Laws 452.

See also Liddell v. Board of Educ., 491 F.Supp. 351, 359-60 (E.D. Mo. 1980).

In light of the Court's finding of unconstitutional segregation imposed by the state government and other defendants, the Court of Appeals stressed the legal obligation of the United States, the State of Missouri, and Board of Education to develop and implement the plans contemplated by paragraph 12 of Judge Meredith's May 21, 1980, Order. Liddell v. Board of Educ., No. 80-1458, slip op. at

20, n.6 (8th Cir., Feb. 13, 1981)(mandating that "the district court countenance no excuse for further delay" in implementing the paragraph 12 plans).

The United States advises that it is always available to assist the Court upon request. The record indicates that since the United States intervened in this case in 1977, the federal government has consistently pursued a policy of assisting the State and local governments to devise plans to provide complete and lasting desegregation in the St. Louis public schools.

In contrast to its previous efforts to devise a desegregation remedy in cooperation with the city and county districts, the United States currently is not seeking a 12(c) interdistrict remedy. As a plaintiff-intervenor, the United States maintains that the obligation to develop a plan pursuant to paragraph 12(c) of Judge Meredith's orders is on the defendant State of Missouri and defendant Board of Education of the City of St. Louis.

Although the Court of Appeals stressed the obligation of the United States to comply with paragraph 12(c) of Judge Meredith's May 21, 1980, Order, the appeals court noted that no party had named the United States as a defendant and alleged that it engaged in discriminatory practices. Id. at 26.

Unless compelled to grant affirmative relief against the United States, the Court believes that the executive branch has a right to change its school desegregation policies. Therefore, the request of the United States to be relieved of its reporting responsibilities under Order H(337)81 will be granted.

The City Board supports the portion of the motion of the United States to modify Order H(337)81 to reflect the changes made in paragraph 12(c) by Judge Meredith's Order dated September 17, 1980, supra.

The original version of paragraph 12(c) required the development of a plan to correct "the remaining vestiges of government-imposed school segregation in the City of St. Louis

and St. Louis County." The City Board agrees with the government's assertion that the original version imposes an awkward limitation on the 12(c) planning process and submits that the problem was corrected in the amended version of paragraph 12(c), which required the development of a plan that would be "limited only by considerations of feasibility and practicality."

Adams rejects the position of the City Board as an attempt to interpose spurious delays in carrying out the original version of paragraph 12(c), which ordered that an interdistrict desegregation plan be presented to the Court sixteen months ago. Because the liability of the City Board and State has been determined by Judge Meredith and affirmed by the Court of Appeals, Adams contends that there is no legitimate reason to permit further delay in addressing the scope of the remedy necessary to alleviate the remaining vestiges of government-imposed school segregation.

The City Board prefers to expand the original version of paragraph 12(c), which was limited to the City of St. Louis and St. Louis County, to include suburban school districts beyond St. Louis County. The Court has stayed its ruling until an evidentiary hearing may be held on expanding this litigation to include school districts in St. Charles and Jefferson Counties. The Court has also stayed discovery and claims against the school districts in St. Louis County that are voluntarily participating in a cooperative plan to achieve complete and lasting desegregation.

Having carefully considered paragraph 12(c) of Judge Meredith's Order dated May 21, 1980, as amended by his order dated September 17, 1980; the mandates of the United States Court of Appeals for the Eighth Circuit; the arguments of counsel; and the record as a whole, Order H(337)81 will be amended to read as follows:

IT IS HEREBY FURTHER ORDERED that in accordance with Judge Meredith's Order dated May 21,

1980, as amended and as affirmed by the United States Court of Appeals, that the State defendants and the Board of Education of the City of St. Louis are ordered and directed as follows:

> To develop and submit to the Court by February 1, 1982, a suggested plan for inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

Dated this 21st day of September, 1981.

UNITED STATES DISTRICT JUDGE